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ABSTRACT

Three principles concerning children's intellectual rights are proposed and discussed. The principles are: (1) intellectual rights of children include access to ideas and freedom of expression; (2) denial of rights on the basis of lack of competence requires empirical justification; and (3) denial of rights on the basis of lack of competence yields an obligation to facilitate intellectual development. The analysis is both legal and psychological. The legal analysis focuses on the intellectual rights that are guaranteed by the First Amendment and the extent to which the First Amendment applies to children. Although the analysis is consistent with a number of judicial decisions, the emphasis is not on rights children have been legally granted but on rights children have in principle as U.S. citizens protected by the Bill of Rights. Similarly, the psychological analysis attempts to show what sort of empirical evidence is relevant to children's intellectual rights and how such evidence can be brought to bear on specific issues. The principles developed are applied to four major educational controversies of the 1980s: censorship and indoctrination, "scientific" creationism, state regulation of private education, and the Equal Access Act of 1984. (RH)

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# CHILDREN'S INTELLECTUAL RIGHTS

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Over the past 20 years, U. S. courts have increasingly recognized children as persons with certain legal rights (Epstein & Epstein, 1982; Hentoff, 1980; O'Neil, 1981). During the same period, theory and research in developmental psychology have provided an increasingly useful empirical basis for making decisions about the rights of children (Melton, 1983; Melton, Koocher, & Saks, 1983; Rodman & Griffith, 1982).

In this paper three principles concerning children's intellectual rights will be proposed and discussed. The analysis is both legal and psychological. With respect to the legal dimension, the focus will be on what intellectual rights are guaranteed by the First Amendment and to what extent the First Amendment applies to children. Although the analysis below is consistent with a number of judicial decisions, the emphasis will be not on what rights children have been granted by Congress or the courts but on what rights they have in principle as U. S. citizens protected by the Bill of Rights. Thus the view presented should be regarded as a general interpretation of the First Amendment as it applies to children rather than as an analysis of specific laws and legal precedents.

Similarly, with respect to the psychological dimension, I will be attempting to show what sort of empirical evidence is relevant to children's intellectual rights and how such evidence can be brought to bear on specific issues. I will not, however, attempt to systematically review the relevant evidence and reach definitive conclusions on any of those issues.

Although the argument below is thus at a level of general principles, it is not meant as a purely abstract exercise. The principles developed apply directly to major educational controversies of the 1980's. This will be illustrated with respect to four such controversies: (a) censorship and indoctrination; (b) "scientific" creationism; (c) state regulation of private education; and (d) the Equal Access Act of 1984.

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## Three Principles

1. Intellectual rights of children include access to ideas and freedom of expression.

1A. The First Amendment guarantees access to ideas and freedom of expression. The First Amendment provides for (a) access to diverse sources of information and to a diversity of opinions and perspectives and (b) the right to formulate and express one's own ideas. The right to freedom of expression is explicit and directly implies the closely related rights to formulate one's own ideas and to have access to diverse sources of information and to a diversity of opinions and perspectives. Thus, the Bill of Rights guarantees a closely interrelated set of rights basic to intellectual freedom.

1B. The First Amendment applies to children. The Bill of Rights does not mention either children or adults—it refers only to "people" and "persons." There is no a priori reason for assuming that children are not people. Though certain limits on rights may be shown to be appropriate in the case of children, we should begin with the general principle that the First Amendment applies to all and then proceed, with caution, to the justification of exceptions.

1C. First Amendment rights may be even more critical to children than to adults. The Piagetian concept of equilibration suggests that exposure to diverse points of view and encouragement to form, express, and discuss one's own opinions are crucial to intellectual development (cf. Shantz, 1984). When one denies an adult access to diverse ideas, one is restricting available input; when one denies such access to a child, however, one is also restricting development of the ability to coordinate differing views. When one denies an adult free expression, one is denying the opportunity to communicate; when one denies free expression to a child, however, one is also restricting the development of the ability to form one's own ideas. In short, in denying First Amendment rights to a child one is restricting not merely the present exercise of those rights but also the development of precisely those intellectual competencies that make the First Amendment meaningful.

2. Denial of rights on the basis of lack of competence requires empirical justification.

2A. Incompetence can be a legitimate basis for denial of liberties. It is justifiable, in principle, to deny certain freedoms to people who demonstrably lack the rationality to look after their own interests and must therefore be protected. We might, for example, determine that children should be shielded from books containing ideas that could be harmful to them on the grounds that they, unlike adults, are incapable of making

appropriate decisions about what to read.

2B. Assertions of lack of competence should be based on relevant and convincing evidence. It should not be assumed that childhood status inherently implies incompetence. The burden of proof should be on those who argue for waiving children's First Amendment rights. Appeal to traditional views about children is not sufficient. Even appeal to general theorizing about developmental stages should be carefully scrutinized for relevance and empirical support. Given the seriousness of compromising a fundamental right, we should insist on a convincing demonstration that particular constraints on the intellectual rights of children below a certain age are necessary. That is, we should require clear evidence that unless we limit children's options in certain ways they will be at substantial risk due to demonstrated deficiencies in specifically relevant competencies.

2C. Children's competence should be compared not to an ideal standard but rather to that of the average adult. Since consitutional rights apply to all normal adults, the competence of normal adults should be taken as the constitutionally relevant standard. Children of a given age should not, as a class, be denied First Amendment rights unless it can be shown that relevant competencies at that age are, on the average, substantially below average adult levels and that, as a result, there is substantial likelihood of harm if adult freedoms are permitted.

3. Denial of rights on the basis of lack of competence yields an obligation to facilitate intellectual development.

3A. Denial of fundamental rights, even when justifiable, should be viewed as a necessary evil. It should be our intent to apply the Bill of Rights as widely as possible. Any necessary limitation should be seen as an unfortunate and dangerous necessity to be overcome if possible.

3B. Intellectual development should be a fundamental goal of education. In limiting children's intellectual rights on the grounds of lack of competence, we incur an obligation to facilitate the development of those competencies that would make denial of rights unnecessary.

## Applications

1. Censorship and indoctrination. Public schools have been targets of continuing efforts to censor what children read and hear (O'Neil, 1981; Parker & Weiss, 1983). The best-known examples of this are the continuing efforts of right-wing Christian fundamentalists to block a constellation of liberal and scientific views that they refer to as "secular humanism." On the political left, there have been

efforts by blacks to censor Mark Twain's Huckleberry Finn for alleged racism, by Jews to censor Shakespeare's The Merchant of Venice for alleged anti-Semitism, and by feminists to censor materials modeling traditional sex roles.

All such efforts raise the spectre of indoctrination (Moshman, 1981). Children should be exposed to a variety of materials (e.g., controversial books and critiques of these books; both traditional and nontraditional sex roles) and should be encouraged to formulate their own views, except where there is clear reason to expect harm due to empirically demonstrated cognitive limitations.

2. "Scientific" creationism. Proponents of creationism--the view that all species were created 10,000 years ago as described in Genesis--have proposed that their view is a scientific theory and should be given equal weight whenever the theory of evolution is taught. Respect for children's rights does not require that we give equal weight to every point of view or that we ignore legitimate standards of scientific adequacy in making curriculum decisions. To the extent allowed by children's cognitive competence, however, education in evolution should avoid indoctrination by stressing empirical evidence and scientific reasoning, rather than relying on appeals to authority and censorship of creationist views (Moshman, 1985a).

3. State regulation of private education. Many states regulate private schools--for example, by mandating teacher certification or curriculum standards. Consideration of intellectual rights suggests that such regulation is permissible if it is necessary to insure that all children get an education that facilitates their intellectual development. Regulation for the purpose of indoctrinating children in a particular ideology, however, violates the rights of both children and parents (Arons, 1983; van Geel, 1983). Thus a given regulation is legitimate only if it can be shown that (a) it serves a compelling educational purpose and (b) that purpose cannot be served with a less restrictive regulation (Moshman, 1985b; van Geel, 1985). Such determinations raise complex empirical questions (Moshman, 1985b).

4. The Equal Access Act. In 1984 Congress passed a bill requiring that, if a secondary school makes its facilities available to students for extracurricular activities, it must allow equal access to all student groups, regardless of the religious, political, or philosophical content of those activities. Opponents of school prayer have feared that this bill will open public schools to religious activities. Others have feared that the bill will open schools to groups of young Nazis, communists, homosexuals, etc. Consitutional issues raised by this bill are central to Bender v. Williamsport Area School District, a case currently before the U. S. Supreme Court.

The Equal Access Act protects the right of students to express and be exposed to views that adults may disapprove of. It is, of course, important to be sure that adults are not using school

facilities to indoctrinate student groups, that students are not being coerced into joining such groups, and that students are not incorrectly perceiving that the views of groups using school facilities are officially approved by school authorities. Although these are real dangers that must be monitored, they should not blind us to the genuine potential of the Equal Access Act for increasing the opportunity for secondary students to use their First Amendment rights.

## Conclusion

Research on cognitive development has provided us with considerable knowledge about the competencies of children at various ages and the conditions conducive to intellectual development. Decisions about the intellectual rights of children should take such information into account. Psychologists have a responsibility to see that relevant theory and data play the role they should in social and legal decisions about children.

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